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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

In re JOSHUA G., a Person
Coming Under the Juvenile
Court Law.

2d Juv. No. B276300
(Super. Ct. No. 15JD00377)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

JULIE G.,

Defendant and Appellant.

Julie G. challenges juvenile court dependency jurisdiction over her son, Joshua. The family moved to California in 2013, making it their “home state” under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). (Fam. Code, §§ 3402, subd. (g), 3421, subd. (a)(1).) Anecdotal information that another state had dependency

jurisdiction—four years ago—does not deprive California of jurisdiction to adjudicate parental neglect occurring here in the family’s new home state. Appellant is correct that the Indian Child Welfare Act (ICWA) was not followed; respondent concedes that it did not notify the Yaqui tribe. (Welf. & Inst. Code, § 224.2.) We reverse and remand to the trial court with directions to comply with ICWA notice requirements.

FACTS

Joshua G. is the son of Julie G. (Mother). Jefferson G. (Father) is Joshua’s presumed father. Joshua will reach the age of majority in 2017.

Joshua was taken into protective custody by the San Luis Obispo County Department of Social Services (DSS) on November 3, 2015, when he was found unconscious at school after using a mixture of methamphetamine, alcohol and cough syrup. He expressed indifference as to whether he lived or died as a result of his misadventure. Joshua was ostensibly in Father’s care, but the two had been homeless for some time. Joshua slept outdoors or “couch surfed,” had poor hygiene and minimal clothing, was unfed, suffered from painful tooth decay, and attended school only a few days per week.

DSS received many referrals regarding Joshua in 2014 and 2015. Even before Joshua overdosed, DSS was aware that he was homeless, thin, unbathed, needed medical attention, was absent from school, and that Father did not know where Joshua lived or where he went after school. Joshua was depressed, “defeated,” and voiced doubt that he would live past the age of 20. Father engaged in domestic violence and used drugs. In 2014, DSS learned that Joshua used methamphetamine supplied by Father’s girlfriend.

DSS filed a petition alleging that Father caused or threatened to cause physical harm to Joshua because he cannot meet Joshua's basic needs for care and supervision. Mother, whose whereabouts were unknown, was charged with neglecting Joshua and failing to provide support for him. DSS believed that Mother's parental rights were terminated four years earlier, in Oregon. Mother was described as "very transient and not reliable." The court found a prima facie case for detaining Joshua.

In the jurisdiction report, Joshua indicated that he found Father's behavior frustrating, attributing it to Father's methamphetamine use. Father failed to attend meetings at the DSS office, and did not ask to reschedule. He opined that Joshua is "in a good place" in foster care because Father has no job, no place to live, and spends his days on the streets. He denied any need for drug abuse treatment. Joshua was thriving in the safety of his foster home and receiving care for his teeth, all but two of which were decayed.

At the jurisdiction hearing on December 17, 2015, Father waived his right to a contested trial. The court found that Joshua's parents endangered him by failing to provide proper supervision or protection. Counsel asked the court to delay in making ICWA findings.

At disposition, the court removed Joshua from parental custody. He remained in foster care. Medical decisions were vested in DSS because the parents are unavailable. Father was allowed to have unsupervised visits, and ordered to participate in a mental health evaluation; a parenting education program; substance abuse testing; and a rehabilitation program if needed. Mother's visits had to be supervised; she was ordered to

participate in a parenting education program and substance abuse testing and counseling.

In June 2016, DSS reported that Mother was sending Joshua marijuana, along with letters expressing concern about his drug overdose and resulting hospitalization. Joshua has high blood pressure, and displayed anger and aggression, but refused to participate in mental health care services despite encouragement from school staff, his social worker and caregivers. Neither parent visited Joshua or complied with the case plan. Joshua began an Independent Living Plan and moved into transitional housing.

Mother was located and advised of the dependency case. She knew that Father and Joshua were homeless, and that Joshua had overdosed on drugs. She admitted to sending Joshua marijuana, believing that it was not illegal because she has a medical marijuana card. In emails, Mother asked that her “property” (meaning Joshua) be sent to her “forthwith” in Victorville, California. She objected to Joshua receiving medical care, threatening to charge DSS \$500,000 every time that Joshua sees a doctor or uses medication.

Mother repeated her demand for the return of her “property” in court at the six-month status review hearing on July 8, 2016. The court noted that Joshua has health issues and Mother has a history of objecting to medical treatment for her children. The court determined that Joshua should remain a dependent in out-of-home placement, and it continued reunification services for the parents, neither of whom made progress toward completing the case plan. The court found that DSS complied with ICWA notice requirements.

DISCUSSION

1. Appeal and Review

Mother appeals from orders made at the post-judgment, six-month status review hearing. (Welf. & Inst. Code, §§ 366.21, subd. (e)(1), 395, subd. (a)(1).) She challenges the juvenile court's fundamental jurisdiction, an issue that cannot be forfeited by failure to raise it in the trial court, and can be asserted for the first time on appeal. (*In re Marriage of Oddino* (1997) 16 Cal.4th 67, 73; *San Joaquin County Human Services Agency v. Marcus W.* (2010) 185 Cal.App.4th 182, 187-188.)

2. UCCJEA

Mother urges that the juvenile court lacks subject matter jurisdiction because Joshua “was the subject of dependency proceedings in Oregon some four years ago.” She reasons that Oregon authorities should handle this matter, under the UCCJEA. In UCCJEA cases, jurisdiction is a legal question, if the evidence is not in dispute. (*In re Guardianship of Ariana K.* (2004) 120 Cal.App.4th 690, 701.)

A dependency case is a “child custody proceeding” under the UCCJEA. (*In re M.M.* (2015) 240 Cal.App.4th 703, 715.) California courts have jurisdiction to make child custody determinations if this is the child's home state when the proceeding begins. (Fam. Code, § 3421, subd. (a)(1).) The “home state” is the one in which the child has lived with a parent for at least six months before the proceeding begins. (Fam. Code, § 3402, subd. (g).)

California is Joshua's home state. He lives here full time and attends high school here. DSS reports indicate that the G. family moved to California from Oregon in March 2013. DSS received ominous reports of neglect, drug abuse and domestic

violence in the G. family, since January 2014, though Joshua was not rescued from his piteous living situation until he overdosed on campus in late 2015. Joshua visited Oregon for a few weeks in the summer of 2015 then returned to Atascadero. The evidence suggests, at most, that Oregon has an open case for Joshua's sister, who lives there with the maternal grandparents because Father has no home for her in California.

Joshua and his parents have a significant connection with California that makes this state a suitable forum for Joshua's dependency case. All three are California residents, and substantial evidence is available in this state concerning Joshua's care, protection, training and personal relationships. (Fam. Code, § 3421, subd. (a)(2)(A)-(B); *In re M.M.*, *supra*, 240 Cal.App.4th at p. 717, fn. 6.) When a child and his parents have all moved to California, deference is not given to the jurisdiction of a state where they formerly resided. (*Kumar v. Superior Court* (1982) 32 Cal.3d 689, 696.)

The UCCJEA does not deprive the juvenile court of jurisdiction. California, not Oregon, has the primary interest in adjudicating Joshua's dependency status, now that he and his parents have made California their home state and the current child neglect allegations that led to the filing of the dependency petition occurred here.

3. ICWA Notice

At the outset of the dependency case, Father signed a notice stating "I may have Indian ancestry" in the "Yaki" (*sic*) tribe. The detention, jurisdiction and status review reports acknowledge that the ICWA may apply. DSS gave notice to the Secretary of the Interior, the Bureau of Indian Affairs (BIA), the Pit River Tribe, the Round Valley Reservation, and the Wilton

Reservation (returned as undeliverable); all are California tribes, though Father's ICWA form states that his father is from the "Yaki" tribe in Arizona, and his attorney informed the court that Father may be associated with the Yaqui tribe in Arizona. No tribe intervened.

DSS and the court have a continuing duty to inquire into a child's possible Indian status. (Welf. & Inst. Code, § 224.3, subd. (a); *In re Isaiah W.* (2016) 1 Cal.5th 1, 10-11, 14; Cal. Rules of Court, rule 5.481(a).) Mother has standing to challenge the sufficiency of ICWA notices, though she does not claim Indian ancestry. (25 U.S.C. § 1914 ["any parent" may assert a challenge under ICWA]; *In re Jonathon S.* (2005) 129 Cal.App.4th 334, 338-339.)

It is plain from the record that Father has claimed, since the inception of this case, ancestry through his father in the Yaqui tribe of Arizona. It is equally plain that DSS sent notice to tribes in California, and no notice to the Yaqui tribe. Despite the lapse, the trial court found that DSS complied with the ICWA. DSS admits its error. Reversal is compelled because the court did not satisfy its duty to notify "any relevant tribe so that the tribe may determine the child's status and decide whether to intervene." (*In re Isaiah W.*, *supra*, 1 Cal.5th at p. 14; Welf. & Inst. Code, § 224.2.)

DISPOSITION

The order of July 8, 2016 finding that DSS complied with the ICWA is reversed. The case is remanded to the trial court with directions to order DSS to conduct a further investigation into Joshua's possible Indian ancestry and to send ICWA notices to the Yaqui tribe of Arizona, the BIA, and any

appropriate Indian tribes.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Linda D. Hurst, Judge
Superior Court County of San Luis Obispo

Christopher Blake, under appointment by the Court
of Appeal, for Defendant and Appellant.

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